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MICHAEL T. BLATT.

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8 **UNITED STATES DISTRICT COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA**

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11 Liberty Mutual Insurance Company,)	Case No. C062022
12 Plaintiff,)	DEFENDANT MICHAEL T.
13 v.)	BLATT'S STATUS
14 Michael T. Blatt,)	CONFERENCE STATEMENT
15 Defendant.)	Date: March 23, 2007
)	Time: 10:00 a.m.
)	Courtroom: 1
16 _____)	

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19 _____ Defendant Michael T. Blatt submits this Status Conference Statement for use at the
20 March 23, 2007 Status Conference.

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DESCRIPTION OF THE CASE

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1. Brief Description of the Events Underlying the Action.

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This is an insurance coverage action relating to Liberty's defense of defendant Michael Blatt in an underlying construction defect action. Defendant was an additional named insured under a policy issued by Liberty to Schnabel Foundation. Subject to a claimed reservation of rights letter, Liberty defended Blatt under the terms of an endorsement which provided that Blatt was an additional insured under the Liberty policy, but "only with respect to liability arising out of [Schnabel's] operations . . ." Schnabel

1 obtained a defense verdict in the underlying action. Blatt paid the \$144,428.60 judgment
 2 entered against him. After the Court taxed costs against Blatt and awarded attorneys' fees to
 3 Plaintiffs' counsel as the prevailing party in the underlying action, Liberty paid \$300,303.85
 4 to extinguish this obligation. Liberty filed the instant action to recover \$315,409.98, the
 5 total of the two amounts. Blatt denies liability for the reasons stated hereinafter.

6 **2. The Principal Factual Issues Which the Parties Dispute.**

- 7 • Whether the September 4, 2002 letter of Michael Barnett for Liberty Mutual
 8 is a reservation of rights letter reserving to Liberty the right to recover
 9 Supplementary Payments made under Coverages A and B of the Liberty Mutual
 10 Policy issued to Schnabel Foundation Company.
- 11 • Accounting for monies claimed by Liberty Mutual.

12 **3. The Principal Legal Issues Which the Parties Dispute.**

13 The primary legal issues are Liberty's duty to defend Blatt in light of the defense
 14 verdict rendered in Schnabel's favor and Liberty's recovery of its payment of the fees and
 15 costs assessed against Blatt in the underlying action and any additional costs and fees which
 16 are not covered under the Liberty policy.

17 Whether the September 4, 2002 letter of Michael Barnett for Liberty Mutual
 18 is a reservation of rights letter reserving to Liberty the right to recover Supplementary
 19 Payments made under Coverages A and B of the Liberty Mutual Policy issued to Schnabel
 20 Foundation Company.

21 Blatt alleges that Liberty had a duty to pay the \$300,303.85 awarded against the
 22 Defendant due to a prevailing party attorney-fee clause as such attorneys' fees award are
 23 statutorily defined as costs.

24 Blatt alleges that Liberty had a duty to pay \$300,303.85 as a 'supplementary payment'
 25 under the terms of their policy, as a cost taxed against the insured and in accord with
 26 Prichard v. Liberty Mut. Ins. Co. (2000) 84 Cal. App. 4th 890.

27 Whether Liberty's attempt to recover monies paid to or on behalf of Blatt is
 28 unreasonable and, therefore, in bad faith.

1 Whether Liberty's attempt to recover monies paid to or on behalf of Blatt is
2 fraudulent and oppressive conduct entitling Blatt an award of punitive damages.

3 **4. Additional Factual Issues (E.g. Service of Process, Etc.) Which Remain
4 Unresolved.**

5 None.

6 **5. Parties Which Have Not Been Served in this Action.**

7 None.

8 **6. Additional Parties Intended to Join.**

9 None.

10 **ALERNATIVE DISPUTE RESOLUTION**

11 The parties have been assigned to Richard Warren for mediation. Mr. Warren has
12 circulated a calendar of availability and in a telephone call, confirmed his availability
13 through most of May through September 1, 2007.

14 **DISCLOSURES**

15 The parties certify that they have made the following disclosures:

16 **1. Witnesses.**

17 Michael Blatt

18 Ronald Foreman

19 Michael Barnette

20 Experts in the underlying action

21 Person Most Knowledgeable for Schnabel Foundation

22 Rand L. Chritton

23 Joseph D. Ryan

24 Jacqueline Fagerlin

25 Al Anolik

26 Haig Harris

27 Peter Kane

28 Mary Kayglaspy

2. Documents.

Foreman and Brasso's attorney billing statements

Foreman and Brasso's files relating to the underlying action

Transcripts in the underlying action relating to trial

Pleadings in the underlying action and all documents on file therewith

Non-protected, non-privileged portions of Liberty's claims file re the defense of

Gabbert

Schnabel Foundation files for the underlying action

Ryan and Lifter files for the underlying action

3. Damage Computations.

Liberty's damage computations are set forth in its motion for default judgment, a copy of which has been provided to defendant.

4. Insurance Agreements.

A copy of the policy at issue is attached to the complaint filed herein and thus is already in the possession of defendant.

DISCOVERY

Previously, the parties agreed to the following discovery plan. However, due to calendar conflicts which have arisen since November 2006 and new pending trial dates, Defendant requests that all dates be continued 60 days. The dates below have been changed to accommodate the 60 day extension.

1. Documents. To the extent relevant documents have not yet been exchanged by the parties, each party will produce the documents in its possession within sixty (60) days of the case management conference. Documents obtained from the Marin County Superior Court, including trial transcripts, to the extent requested by both parties, shall be obtained and the costs split evenly between the parties.

2. Written Discovery. Written discovery shall be completed by August 1, 2007.

1 3. **Witnesses.** Depositions of any witnesses shall be completed by September
2 31, 2007.

3 **4.** **Expert Witnesses.** Any expert witness-related discovery shall be completed
4 by October 31, 2007.

DISPOSITIVE MOTIONS

6 The parties agree that dispositive motions shall be set for hearing no later than
7 December 1, 2007.

TRIAL SCHEDULE

9 The parties request a trial date in or around January 31, 2008. The parties expect that
10 the trial will last four (4) days.

11 || DATED: March 19, 2007

FOREMAN & BRASSO

13 By: /s/
14 Ronald D. Foreman
Attorneys for Defendant
Michael T. Blatt

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